

Supreme Court, U.S.
FILED

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No. _____

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IN THE

SUPREME COURT OF THE UNITED STATES

Arthur Allen and Donald Bailey,

Petitioners

-vs-

Bunker Hill Township

 Respondent

On Petition for Writ of Certiorari to
the Michigan Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

INTRODUCTORY STATEMENT

Arthur Allen owns a parcel of real property in Bunker Hill Township. Donald Bailey and his wife Glenda, Mr. Allen's daughter, own and occupy a 1984 manufactured home, built and certified to "HUD standards" when sold to the retail public. The Baileys lived in the home on another parcel in Bunker Hill Township from 1996 with all required local permits. Manufactured homes are permitted land uses under the Township Zoning Ordinance. In 1999 the Township adopted regulations requiring re-inspections and re-certifications to "current HUD standards" as a condition of locating or moving a manufactured home within the Township. In 2000 the Baileys moved the home to Mr. Allen's parcel.

QUESTIONS PRESENTED

1. Are the federal safety and construction standards required under the National Manufacturing Construction and Safety Standards of Act of 1974, 42 USC §5401-5426, and the federal regulations, 42 CFR §3280.1, *et seq.*, for manufactured homes, applied retroactively?
2. Is a local unit of government, barred from mandating re-inspection and re-certification to the "current" federal safety and construction standards of the National Manufacturing Construction and Safety Standards of Act of 1974, *supra.*, and the federal regulations, *supra.*, by federal preemption?

LIST OF PARTIES

The names of all parties to the proceeding in the court whose judgment is sought to be reviewed here appear in the caption of the case.

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62 FR 3456, Rules and Regulations, Department of Housing and Urban Development, 24 CFR Part 3282, Manufactured Housing Construction and Safety Standards: Notice of Internal Guidance on Preemption.	11, 16
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ORDINANCES

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OPINIONS REPORTED BELOW

The Opinion of the Michigan Court of Appeals, November 9, 2004, (No. 249353, 2004 WL 2534372).

Application for Leave to Appeal to the Michigan Supreme Court denied. 474 Mich. 854, 702 NW 2d 575 (August 30, 2005).

BASIS FOR JURISDICTION IN THE UNITED STATES SUPREME COURT

The Michigan Supreme Court order, denying the final discretionary review under the State rules, was entered August 30, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. §1257.

STATUTES AND FEDERAL REGULATIONS INVOLVED

The pertinent provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, 42 U.S.C. §5401 *et seq.*, are set forth below:

42 U.S.C. §5403

(d) *Supremacy of Federal standards*

Whenever a Federal manufactured home construction and safety standard established under this chapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the

Federal manufactured home construction and safety standard."

42 U.S.C. § 3:

(d) The Secretary is authorized to conduct such inspections and investigations as may be necessary to promulgate or enforce Federal manufactured home construction and safety standards established under this chapter or otherwise to carry out his duties under this chapter.

The most pertinent Federal Regulation is set forth below:

24 CFR § 3282.11 Preemption and reciprocity.

(a) No State manufactured home standard regarding manufactured home construction and safety which covers aspects of the manufactured home governed by the Federal standards shall be established or continue in effect with respect to manufactured homes subject to the Federal standards and these regulations unless it is identical to the Federal standards.

(b) No State may require, as a condition of entry into or sale in the State, a manufactured home certified (by the application of the label required by §3282.362(c)(2)(i)) as in conformance with the Federal standards to be subject to State inspection to determine compliance with any standard covering any aspect of the manufactured home covered by the Federal standards. Nor may any State require that a State label be placed on the manufactured home certifying conformance to the Federal standard or an identical standard. Certain actions that States are permitted to take are set out in §3282.303.

(c) States may participate in the enforcement of the Federal standards enforcement program under these regulations either as SAAs or PIAs or both. These regulations establish the exclusive system for enforcement of the Federal standards. No State may establish or keep in effect through a building code enforcement system or otherwise, procedures or requirements which constitute systems for enforcement of the Federal standards or of identical State standards which are outside the system established in these regulations or which go beyond this system to require remedial actions which are not required by the Act and these regulations. A State may establish or continue in force consumer protections, such as warranty or warranty performance requirements, which respond to individual consumer complaints and so do not constitute systems of enforcement of the Federal standards, regardless of whether the State qualifies as an SAA or PIA.

(d) No State or locality may establish or enforce any rule or regulation or take any action that stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. The test of whether a State rule or action is valid or must give way is whether the State rule can be enforced or the action taken without impairing the Federal superintendence of the manufactured home industry as established by the Act.

[42 FR 2580, Jan. 12, 1977; 56 FR 65186, Dec. 16, 1991; 61 FR 10859, March 15, 1996] (App.67-88)

STATEMENT OF FACTS

The facts in this case were stipulated to by the parties. The Defendant/Petitioner-Bailey, together with his wife, Glenda, Arthur Allen's daughter, own a 1984 manufactured home.¹ Donald and Glenda Bailey occupied the home as their principal residence for their family from 1996 to 2000 on Haynes Road in Bunker Hill Township with all County and Township health and zoning permits. The Baileys moved the home to Mr. Allen's land in 2000. Under the Township zoning ordinance, manufactured homes are permitted uses for both sites.

The Township zoning provision, §11.13, simply states:

"All single-family dwelling units, including mobile and modular units, to be constructed or located in bunker Hill township shall conforming to all standards listed below. These standards shall apply to all one-family living units built or brought into a Township, those whose location is changed within the Township or on a lot, and those dwellings, mobie (sic) homes, or modular homes which replace an existing mobile home....

¹ The Michigan courts refer to the Allen/Bailey home both as "mobile" and "manufactured". Although, the term "mobile home" refers to mobile homes built before 1976, the parties stipulated that this home is a "manufactured home" or a "HUD home" constructed and inspected in 1984 before sale to the consumer under Federal authority of National Manufacturing Construction and Safety Standards of Act of 1974, 42 USC §5401-5426. (App.a-13, ¶¶6, 7, and 8.)

H. All dwelling units shall meet the minimum construction and safety standards of ...the Department of Housing and Urban Development....."

When the Baileys asked in 2000 for Township permits, they were informed that the Township now had a 1999 "regulation" which stated:

"It is the responsibility of the owner to see that the mobile home meets the current H.U.D. standards before applying for a building permit. (H.U.D. standards in booklet Part 3280 24 CPR CFR Ch.XX) The Township Building Inspector will not issue a building permit prior to an approved H.U.D. inspection. Phone number Dept. of Commerce (334-6203)." (App.a-18-20.)

After being refused a Township permit, Glenda Bailey wrote to HUD in Washington, DC, at the address and phone numbers given by the Township. HUD told her that inspections not required and the Township was preempted². Then, she contacted the Michigan Manufactured Housing Commission (formerly, the Mobile Home Commission), and the Michigan Attorney General, and again was informed that there is no one who performs "current HUD inspections" on existing manufactured homes.³

The Petitioners' 1984 Schult Home was manufactured in compliance with the HUD standards in 1984 and remains compliant to those standards. The 1984 manufactured home built can not meet the three HUD amended construction

²-See, HUD correspondence, App. a-31-32.

³ See, State correspondence, App. a-33-34, and summary of testimony and excerpts from DeGroat deposition. App. a-21-27.

standards effective October 25, 1995 required by the Township regulation. There no other occupancy issue with regard to the home. (App. a-15.)

The Township commenced suit and Petitioners/Defendants answered claiming that the local ordinance was preempted by federal law.

On June 21, 2001, the Ingham County Michigan Circuit Court entered an Opinion on cross-motions for summary disposition, that the Bunker Hill Township Zoning Ordinance provided no mechanism to allow compliance with the requirement that the mobile home comply with "current" Federal (HUD) standards for mobile (or manufactured) homes and denied the Township's request for summary disposition but that there were facts which precluded summary disposition for the Petitioners. (App. a-1) The parties then stipulated to facts and exhibits for further proceedings.

On March 8, 2002, the Circuit Court entered an Opinion granting a Preliminary Injunction, reversed its earlier June 21, 2001 Opinion, and determined that although the Petitioners/Defendants' 1984 home previously complied with HUD Standards in 1996 when it was first placed in Bunker Hill Township, that by moving to a new location in 2000 within the same Township, the home lost its standing as compliant to then-current 1999 HUD standards, and must comply with the amended HUD standards. The Court acknowledged that HUD does not require nor provide for re-inspection or re-certification of older homes, anywhere or anytime, absent a consumer complaint, but that was no defense to compliance with the local ordinance. (App. a-35-46).

On April 25, 2002 the Circuit Court clarified its prior opinion (App. a-47-48) and May 10, 2002 entered a Preliminary Injunction, which became the effective final